

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2006-0675, State of New Hampshire v. John Johnson, the court on July 3, 2007, issued the following order:**

The defendant, John Johnson, appeals his conviction for burglary of a DHL facility in Londonderry. He argues that the trial court erred in precluding his cross-examination of: (1) a State's witness about her arrest for a burglary in Concord; and (2) a Connecticut police officer regarding his arrest of two men in possession of jewelry taken in the DHL burglary who at the time of arrest had burglary tools. We affirm.

A criminal defendant has a fundamental right to cross-examine prosecution witnesses; that right, however, is not unfettered. State v. McGill, 153 N.H. 813, 817 (2006). Although a trial court may not completely deny a defendant the right to cross-examine a witness on a proper matter of inquiry, once a defendant has been permitted sufficient cross-examination to satisfy a constitutional threshold, the judge's limitation of subsequent cross-examination is measured against an unsustainable exercise of discretion standard. Id.

In this case, the defendant sought to question the State's witness about her arrest in Concord to establish that she had given a second pretrial statement to the police to curry favor on the Concord charge. The trial court found, however, that the witness had not been charged with an offense in Concord at the time she supplemented her pretrial statement. The court further found that the defendant had other areas in which to cross-examine the witness on her motives, including the State's plea agreement on charges related to the same burglary with which the defendant was charged. Finally, the court found that the defendant was attempting to introduce the Concord charge as propensity evidence. Given the trial court's findings, which are supported by the record, we find no error.

The defendant also sought to present evidence that two men were arrested in Connecticut and found to be in possession of jewelry taken in the DHL burglary and of burglary tools. Although the trial court permitted the admission of the jewelry evidence and allowed the defendant to pursue his theory that someone else had committed the DHL burglary, it barred evidence of the burglary tools, finding that it would create a misleading impression. See N.H. R. Ev. 403. Based upon the record, we find its exercise of discretion was sustainable.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**